

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GENE T. FAVORS,

Defendant-Appellant.

UNPUBLISHED
February 21, 2003

No. 237683
Wayne Circuit Court
LC No. 98-004497

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his resentencing to six to ten years’ imprisonment for assault with intent to commit great bodily harm less than murder. MCL 750.84. We remand for resentencing.

Defendant was convicted by jury of kidnapping, first-degree criminal sexual conduct, and assault with intent to commit great bodily harm. Defendant was sentenced to forty to sixty years’ for kidnapping, life for criminal sexual conduct, and six to ten years’ and a \$5,000 fine for assault. This Court affirmed defendant’s convictions, but remanded for resentencing on the assault conviction, because MCL 750.84 does not allow for the imposition of both the term of imprisonment and a fine. *People v Favors*, unpublished opinion per curiam of the Court of Appeals, issued 08/28/01 (Docket No. 215826).

At resentencing, the trial court denied defendant’s request for an updated presentence report. A written presentence report is required for the initial sentencing of a defendant and cannot be waived. *People v Triplett*, 407 Mich 510; 287 NW2d 165 (1980). An updated report is not subject to the same stringent requirements, but a reasonably updated presentence report is required for resentencing. *People v Hemphill*, 439 Mich 576; 487 NW2d 152 (1992). A defendant may waive the right to a reasonably updated presentence report at resentencing where both sides believe the previous report is accurate. *Id.*, 582. Defendant did not waive his right, and specifically requested an updated report. The trial court erred in failing to obtain a reasonably updated report, and resentencing is mandated. *Triplett, supra*.

On remand, defendant shall be given an opportunity for allocution at the resentencing. MCR 6.425(D)(2)(c). Where defendant had the opportunity to fully present his appeal to this Court, he was not harmed by the trial court’s resistance to filing his appeal papers.

Remanded for resentencing with respect to defendant's assault conviction. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ E. Thomas Fitzgerald

/s/ Christopher M. Murray